



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 10, 2015

Ms. Aimee Alcorn  
Assistant City Attorney  
City of Corpus Christi  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2015-25868

Dear Ms. Alcorn:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 590765.

The Corpus Christi Police Department (the "department") received a request for information concerning a specified incident. The department released information responsive to the request but made redactions as permitted by sections 552.130 and 552.136 of the Government Code without requesting a decision from this office.<sup>1</sup> *See* Gov't Code §§ 552.130(c), .136(c). Pursuant to sections 552.130(d) and 552.136(d), the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under sections 552.130(a) and 552.136(b) of the Government Code. *See id.* §§ 552.130(d), .136(d). We have considered the department's position and reviewed the information.

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<sup>1</sup>The department also redacted certain telephone numbers and addresses pursuant to Open Records Letter No. 2011-16393 (2011), a previous determination authorizing the department to withhold, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, the origination telephone numbers and addresses of 9-1-1 callers furnished to the city by a 9-1-1 service supplier established in accordance with chapter 772 of the Health and Safety Code. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, facts, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit and a motor vehicle title or registration issued by an agency of this state or another state or country. *Id.* § 552.130(a). We note section 552.130 is intended to protect privacy interests, and the requestor in this case represents an individual whose information the department redacted. The requestor has a right of access to his client's motor vehicle record information. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the information that relates to the requestor's client, the department must withhold the motor vehicle record information you redacted under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. We note section 552.136 is also intended to protect individual privacy interests, and the requestor has a right of access to his client's own information. *See id.* § 552.023. Accordingly, to the extent the information you redacted does not relate to the requestor's client, the department must withhold it under section 552.136 of the Government Code.

The remaining information contains dates of birth of members of the public. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a date of birth of a member of the public is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

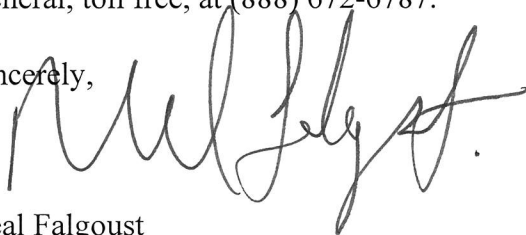
substantially outweighed the negligible public interest in disclosure.<sup>3</sup> *Tex. Comptroller*, 354 S.W.3d at 347–48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to members of the public, and thus, dates of birth of members of the public are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. However, the requestor has a right of access to his client's own date of birth. *See* Gov't Code § 552.023. Accordingly, the department must withhold all dates of birth of members of the public other than the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information that relates to the requestor's client, the department must withhold the motor vehicle record information you redacted under section 552.130 of the Government Code. To the extent the information you redacted does not relate to the requestor's client, the department must withhold it under section 552.136 of the Government Code. The department must withhold all dates of birth of members of the public other than the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neal Falgoust', written over a horizontal line.

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/eb

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<sup>3</sup>Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov't Code § 552.102(a).

Ref: ID# 590765

Enc. Submitted documents

c: Requestor  
(w/o enclosures)